

Montana Water Court
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FILED
05/08/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41K-0047-R-2023
Block, Nathaniel
3.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Bob Murray Jr.

OBJECTOR: Bob Murray Jr.

CASE 41K-0047-R-2023
41K 146309-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER’S REPORT
FINDINGS OF FACT

1. The above-captioned claim appeared in the Preliminary Decree for the Sun River (Basin 41K) with issue remarks. Claimant Bob Murray Jr. filed an Objection to the claim seeking to modify Point of Diversion #1.

2. On March 10, 2023, the above-captioned claim was consolidated into Water Court Case 41K-0047-R-2023 and this Court issued an Order Setting Filing Deadline requiring the claimant to state their position on modifying the point of diversion as follows:

Point of Diversion:

<u>ID</u>	<u>GOV LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1	3	SWNWNE	8	20N	2W	Cascade
		<u>SEWNNE</u>				

3. Two issue remarks appeared on the claim:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 110 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

4. On April 5, 2023, the claimant filed a Response to Court’s Order Consolidating Case and Setting Filing Deadline stating that he concurred with and had no objection to the modification described in the Order as well as the removal of the issue remarks.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it

existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

CONCLUSION OF LAW

1. The modification discussed above resolve the Objection to the claim. The issue remarks should be removed from the claim as the ‘acres irrigated’ remark was resolved in a previous Master’s Report and the remaining notice type remark has served its purpose.

RECOMMENDATION

1. Upon review the record in this case, the above-captioned claims should be modified as discussed above. The issue remarks should be removed from the claim.

2. The Objection should be dismissed as it has been resolved.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K

Water Right Number: 41K 146309-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BOB MURRAY JR
2426 4TH AVE NW
GREAT FALLS, MT 59404

Priority Date: MAY 1, 1932

Type of Historical Right: USE

Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 5.63 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 150.00

Source Name: UNNAMED TRIBUTARY OF SUN RIVER

Source Type: SURFACE WATER

THE SOURCE OF THIS RIGHT IS A SPRING WHICH MAY BE FED IN SIGNIFICANT PART BY RETURN FLOWS GENERATED BY THE SUN RIVER PROJECT. THE UNITED STATES BUREAU OF RECLAMATION AND THE FORT SHAW IRRIGATION DISTRICT MAINTAIN THE RIGHT TO REDUCE THE RETURN FLOWS OR WASTE WATER WITHIN THE PROJECT BOUNDARY THROUGH IMPROVED EFFICIENCY OR SALE OF WATER SERVICE. NO INJURY CAN OCCUR TO THIS WATER RIGHT FROM ANY CHANGE IN THE AMOUNT, TIMING OR LOCATION OF RETURN FLOWS WITHIN THE SUN RIVER PROJECT BOUNDARIES.

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SEWNNE	8	20N	2W	CASCADE
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	PUMP					
2	3	S2NWNE	8	20N	2W	CASCADE
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	DAM					
3	1	SENE	8	20N	2W	CASCADE
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	DAM					
Period of Use:	MAY 1 TO NOVEMBER 1					

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.00	1	NENE	8	20N	2W	CASCADE

2	30.00		SWNE	8	20N	2W	CASCADE
3	10.00	3	NWNE	8	20N	2W	CASCADE
4	50.00		E2NW	8	20N	2W	CASCADE
5	20.00	13	SESE	5	20N	2W	CASCADE
6	20.00		N2NESW	8	20N	2W	CASCADE
Total:							
	150.00						

Remarks:

THIS WATER RIGHT IS USED AS SUPPLEMENTAL IRRIGATION WATER ON LAND SERVED BY THE FORT SHAW IRRIGATION DISTRICT.